

§ 10.508

and the date by which the employee is either to return to work or notify the employer of his or her decision to accept or refuse the job offer. The employer must send a complete copy of any job offer to OWCP when it is sent to the employee.

§ 10.508 May relocation expenses be paid for an employee who would need to move to accept an offer of reemployment?

If possible, the employer should offer suitable reemployment in the location where the employee currently resides. If this is not practical, the employer may offer suitable reemployment at the employee's former duty station or other location. Where the distance between the location of the offered job and the location where the employee currently resides is at least 50 miles, OWCP may pay such relocation expenses as are considered reasonable and necessary if the employee has been terminated from the agency's employment rolls and would incur relocation expenses by accepting the offered reemployment. OWCP may also pay such relocation expenses when the new employer is other than a Federal employer. OWCP will notify the employee that relocation expenses are payable if it makes a finding that the job is suitable. To determine whether a relocation expense is reasonable and necessary, OWCP shall use as a guide the Federal travel regulations for permanent changes of duty station.

§ 10.509 If an employee's light duty job is eliminated due to downsizing, what is the effect on compensation?

In general, an employee will not be considered to have experienced a compensable recurrence of disability as defined in § 10.5(x) merely because his or her employer has eliminated the employee's light-duty position in a reduction-in-force or some other form of downsizing. When this occurs, OWCP will determine the employee's wage-earning capacity based on his or her actual earnings in such light-duty position if this determination is appropriate on the basis that such earnings fairly and reasonably represent the employee's wage-earning capacity and such a determination has not already been made and the employing agency

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has stated, in writing, that no other employment is available.

§ 10.510 When may a light duty job form the basis of a loss of wage-earning capacity determination?

A light-duty position that fairly and reasonably represents an employee's ability to earn wages may form the basis of a loss of wage-earning capacity determination if that light duty position is a classified position to which the injured employee has been formally reassigned. The position must conform to the established physical limitations of the injured employee; the employer must have a written position description outlining the duties and physical requirements; and the position must correlate to the type of appointment held by the injured employee at the time of injury. If these circumstances are present, a determination may be made that the position constitutes "regular" Federal employment. In the absence of a "light-duty position" as described in this paragraph, OWCP will assume that the employee was instead engaged in non-competitive, makeshift or odd lot employment which does not represent the employee's wage-earning capacity, *i.e.*, work of the type provided to injured employees who cannot otherwise be employed by the Federal Government or in any well-known branch of the general labor market.

§ 10.511 How may a loss of wage-earning capacity determination be modified?

If OWCP issues a formal loss of wage-earning capacity determination, including a finding of no loss of wage-earning capacity, that determination and rate of compensation, if applicable, remains in place until that determination is modified by OWCP. Modification of such a determination is only warranted where the party seeking the modification establishes either that there is a material change in the nature and extent of the injury-related condition, the employee has been retrained or otherwise vocationally rehabilitated, or the original determination was erroneous. However, OWCP is not precluded from adjudicating a limited period of disability following the

issuance of a loss of wage-earning capacity decision, such as where an employee has a demonstrated need for surgery.

RETURN TO WORK—EMPLOYEE'S
RESPONSIBILITIES

§ 10.515 What actions must the employee take with respect to returning to work?

(a) If an employee can resume regular Federal employment, he or she must do so. No further compensation for wage loss is payable once the employee has recovered from the work-related injury to the extent that he or she can perform the duties of the position held at the time of injury, or earn equivalent wages.

(b) If an employee cannot return to the job held at the time of injury due to partial disability from the effects of the work-related injury, but has recovered enough to perform some type of work, he or she must seek work. In the alternative, the employee must accept suitable work offered to him or her. This work may be with the original employer or through job placement efforts made by or on behalf of OWCP.

(c) If the employer has advised an employee in writing that specific alternate positions exist within the agency, the employee shall provide the description and physical requirements of such alternate positions to the attending physician and ask whether and when he or she will be able to perform such duties.

(d) If the employer has advised an employee that it is willing to accommodate his or her work limitations, the employee shall so advise the attending physician and ask him or her to specify the limitations imposed by the injury. The employee is responsible for advising the employer immediately of these limitations.

(e) From time to time, OWCP may require the employee to report his or her efforts to obtain suitable employment, whether with the Federal Government, State and local Governments, or in the private sector.

§ 10.516 How will an employee know if OWCP considers a job to be suitable?

OWCP shall advise the employee that it has found the offered work to be suitable and afford the employee 30 days to accept the job or present any reasons to counter OWCP's finding of suitability. If the employee presents such reasons, and OWCP determines that the reasons are unacceptable, it will notify the employee of that determination and that he or she has 15 days in which to accept the offered work without penalty. At that point in time, OWCP's notification need not state the reasons for finding that the employee's reasons are not acceptable.

§ 10.517 What are the penalties for refusing to accept a suitable job offer?

(a) 5 U.S.C. 8106(c) provides that a partially disabled employee who refuses to seek suitable work, or refuses to or neglects to work after suitable work is offered to or arranged for him or her, is not entitled to compensation. An employee who refuses or neglects to work after suitable work has been offered or secured for him or her has the burden to show that this refusal or failure to work was reasonable or justified.

(b) After providing the two notices described in § 10.516, OWCP will terminate the employee's entitlement to further compensation under 5 U.S.C. 8105, 8106, and 8107 on all claims where the injury occurred prior to the termination decision, as provided by 5 U.S.C. 8106(c)(2). However, the employee remains entitled to medical benefits as provided by 5 U.S.C. 8103.

§ 10.518 Does OWCP provide services to help employees return to work?

OWCP may, in its discretion, provide vocational rehabilitation services as authorized by 5 U.S.C. 8104. Vocational rehabilitation services may include vocational evaluation, testing, training, and placement services with either the original employer or a new employer, when the injured employee cannot return to the job held at the time of injury. These services also include functional capacity evaluations, which help